

Case 1:19-cv-00066-MAC-CLS Document 31 Filed 06/02/22 Page 1 of 2 PageID #: 130

EASTERN DISTRICT OF TEXAS

JONATHON SCHUBERT,

Plaintiff,

versus

RUBEN GUTIERREZ, *et al.*,

Defendants.

CIVIL ACTION NO. 1:19-CV-66

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Plaintiff Jonathon Schubert, proceeding *pro se*, filed the above-styled lawsuit against several defendants, including Ruben Gutierrez. The court previously referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and orders of this court.

Defendant Gutierrez has filed a motion to dismiss. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motion be granted.

The court has received the Report and Recommendation, along with the record, pleadings, and all available evidence. Plaintiff filed what the court construes as objections to the magistrate judge's Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

The magistrate judge concluded the motion to dismiss should be granted because plaintiff failed to exhaust his administrative remedies. In his objections, plaintiff states he would like to have a chance to exhaust his administrative remedies.


The exhaustion requirement is mandatory and “courts have no discretion to excuse a prisoner’s failure to properly exhaust the prison grievance process before filing their complaint.” *Gonzalez v. Seal*, 702 F.3d 785, 788 (5th Cir. 2012). By stating he would like to have the chance to exhaust his administrative remedies, plaintiff acknowledges he did not exhaust before filing his

case. As a result, the magistrate judge correctly concluded that the motion to dismiss should be granted. Plaintiff's objections are therefore without merit.

ORDER

Accordingly, the objections (#29) filed by plaintiff in this matter are **OVERRULED**. The findings of fact and conclusions of law set forth in the report of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. The motion to dismiss (#24) is **GRANTED**. Defendant Gutierrez is **DISMISSED** from this lawsuit.

SIGNED at Beaumont, Texas, this 2nd day of June, 2022.

A handwritten signature in black ink, reading "Marcia A. Crone", is positioned above a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE